IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.375 OF 2006

Nitin Bandhekar ...Petitioner.

Versus

The Special Recovery Officer
and Sales Officer & Ors. ...Respondents.

Ms. Kranti S. Anand i/b Shri Vaibhav Punekar for the Petitioner.

Shri N.N.Bhadrashete for Respondent No.2.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 13th FEBRUARY, 2006.

P.C. :

1. Heard Ms. Anand - learned Counsel appearing for the petitioner and Shri Bhadrashete - learned Counsel appearing for respondent No.2 Bank.

2. The petitioner is aggrieved by an order passed by the Divisional Joint Registrar on 28th November, 2005 in Revision Application No.411 of 2005.

3. The petitioner is a purchaser and according to him, he has purchased in auction a residential flat which was mortgaged by respondent No.4 to the second respondent Bank. Upon default committed by respondent No.4, the second respondent Bank initiated proceedings and the Special Recovery Officer in execution of the

award/recovery certificate issued in favour of the second respondent, conducted an auction-sale of the flat. The petitioner's bid at the auction was accepted and he has tendered the purchase price; as also moved the third respondent Society and in its record a entry has been made that the flat is transferred to the petitioner.

4. According to the petitioner, after all this process was complete, the Special Recovery Officer has refused to complete the transaction and at the instance of respondent No.4 - borrower, has issued a direction by which the entire sale stands set-aside and the property reverts to respondent No.4-borrower.

5. I have perused the Petition and the order under challenge. Some of the letters which were exchanged by the Special Recovery Officer and the third respondent Society are also annexed to the Petition. The essential plea raised is that the Special Recovery Officer and second respondent have in collusion with the borrower, backed out of the transaction and refused to hand over possession of the flat in question to the petitioner. The petitioner's case is that having tendered the entire purchase price, a right accrues in his favour and the flat must be handed over to him.

6. It is not as if that the contentions revolve around the action of the Special Recovery Officer, but they pertain the role played by the Co-operative Housing Society and borrower. Ultimately, the petitioner will have to establish his right by filing a Suit. It will be for him to establish in the Suit and/or appropriate proceedings, his right in the said flat. In such proceedings, he will have to also implead the Co-operative Housing Society and the second respondent Bank as parties. The petitioner will also have to involve the principal borrower. In my view, in Writ jurisdiction it is not possible to examine all the factual aspects.

7. Needless to observe that if such Suits/proceedings are instituted, the order under challenge as well as the observations made therein would not prevent the petitioner from raising appropriate pleas, and for the Court to consider them in accordance with law.

8. The Petition is, therefore, dismissed with liberty to petitioner to take-out appropriate proceedings to challenge the above mentioned acts.

9. At this stage, learned Counsel appearing for the petitioner submits that the flat which is the security

of the second respondent is still in its possession and the same is not handed over to respondent No.4. Shri Bhadrashete takes instructions and states that the flat is indeed in possession of respondent No.2 Bank. In these circumstances, the Bank is directed not to part with the possession of the flat for a period of six weeks from today to enable the petitioner to take out appropriate proceedings.

(S.C.DHARMADHIKARI,J.)